



## **I. PARTIES**

1.

Western World is a corporation organized and incorporated under the laws of the State of New Hampshire with its principal place of business in New Jersey. It is a citizen of the States of New Hampshire and New Jersey for purposes of determining diversity of citizenship in this action.

2.

Narconon of Georgia, Inc. (“Narconon of Georgia”) is a non-profit corporation organized and incorporated under the laws of the State of Georgia with its principal place of business in the State of Georgia. It is a citizen of the State of Georgia for purposes of determining diversity of citizenship in this action. It can be served by delivering a summons and a copy of this Petition to its registered agent, Mathew C. Hines, 150 Bankhead Highway, Carrollton, Carroll County, Georgia 30117.

3.

Narconon International (“Narconon International”) is a non-profit corporation organized and incorporated under the laws of the State of California with its principal place of business in the State of California. It is a citizen of the State of California for purposes of determining diversity of citizenship in this

action. Service may be perfected on Narconon International by delivering a summons and a copy of this Petition to its registered agent, Helena Kobrin, 3055 Wilshire Blvd., Ste. 900, Los Angeles, CA 90010-1137.

4.

Delgado Development, Inc. ("Delgado") is a dissolved corporation that was incorporated under the laws of the State of Georgia. At all times during its operation and as a dissolved corporation, its principal place of business is the State of Georgia. For purposes of determining diversity of citizenship in this action, Delgado is a citizen of the State of Georgia. Delgado may be properly served, pursuant to Fed. R. Civ. P. 4(h) and O.C.G.A. § 14-4-161(b) by delivering a summons and a copy of this Petition to its registered agent at the time of dissolution: Maria Delgado, 2810 Valley Brook Drive, Marietta, Cobb County, Georgia 30008.

5.

Patrick C. Desmond and Mary C. Desmond are residents of the State of Florida. The Estate of Patrick W. Desmond, for which Mary C. Desmond is the duly appointed administratrix, was formed and letters of administration were issued in the State of Florida. Patrick W. Desmond was a citizen of the State of Florida at the time of his death. For purposes of determining diversity of

citizenship in this action, Patrick C. Desmond; Mary C. Desmond, individually and as administratrix of the Estate of Patrick W. Desmond; and the Estate of Patrick W. Desmond are citizens of the State of Florida. They may be properly served in person by delivering a summons and a copy of this Petition to the home address of Patrick C. Desmond and Mary C. Desmond at: 934 Cormorant Court, Viera, Florida 32955.

## **II. JURISDICTION AND VENUE**

6.

This declaratory judgment action arises out of an actual dispute or controversy that exceeds \$75,000 exclusive of interest and costs. The dispute involves allegations of wrongful death and demands have been made by Defendants Patrick C. Desmond and Mary C. Desmond to the other Defendants and Plaintiff an amount in excess of \$1 Million. In addition, the projected cost of providing legal defense to persons insured under the Western World insurance policy pursuant to its duty to defend, exclusive of interest and costs for the prosecution of this action by Western World, exceeds \$75,000.

7.

There is complete diversity of citizenship between Plaintiff and all Defendants. None of the Defendants are citizens of the same states as Plaintiff.

Therefore, pursuant to 28 U.S.C. §§ 2201 and 1332 (a) (1), this Court properly has diversity jurisdiction over this matter.

8.

Venue is proper in this Court pursuant to 28 U.S.C. § 1331(a) and (c).

### **III. STATEMENT OF CONTROVERSY**

9.

This action arises out of an insurance coverage dispute and the risk of immediate and ongoing irreparable harm in the form of substantial ongoing cost of defense under the subject Western World insurance policy for the defense of a matter for which there are genuine coverage defenses and substantial uncertainties as to the applicability of the Western World coverage.

10.

On June 11, 2008, Patrick Desmond died as a consequence of a self-administered drug overdose.

11.

The drug overdose that led to the death of Patrick Desmond occurred while he was not under the control of Narconon of Georgia, Narconon International, Delgado or any of their agents or employees.

12.

The drug overdose that led to the death of Patrick Desmond occurred while he was not on any premises owned or operated by of Narconon of Georgia, Narconon International or Delgado.

13.

At all times material to this action, Patrick Desmond was a 28 year old legally competent adult, having never been declared legally incapacitated or incompetent by any court.

14.

Prior to his death Narconon of Georgia provided drug and alcohol abuse counseling to Patrick Desmond.

15.

Prior to his death, drug and alcohol abuse counseling was provided to Patrick Desmond by Narconon of Georgia at the Narconon of Georgia facilities located at 5688 Peachtree Parkway, Ste. B1, Norcross, GA 30092 and 6487 Peachtree Industrial Blvd, Ste. C, Norcross, GA 30092.

16.

At the time of his death, Patrick Desmond was temporarily residing at the One Sovereign Place Apartments, located at 4883 Roswell Road NE, Atlanta, Georgia (hereinafter “the Sovereign Place Apartments”).

17.

Defendants Patrick C. Desmond, Mary C. Desmond individually and Mary C. Desmond as administratrix of the Estate of Patrick W. Desmond (“the Desmonds”) brought a civil action against Narconon of Georgia, Narconon International, Delgado, Lisa Carolina Robbins, M.D. and the Robbins Group, Inc., (hereinafter collectively referred to as “the Underlying Defendants”) for various allegations of wrongdoing in the administration of drug and alcohol abuse counseling and for the death of Patrick Desmond. Said civil action brought by the Desmonds is referred to herein as “the Underlying Action” and a true and correct copy of the last amended complaint in the Underlying Action is attached hereto as Exhibit “A”.

18.

The Desmonds claim in the Underlying Action that the temporary residence of Patrick Desmond at the Sovereign Place Apartments was part of an inpatient program provided by Narconon of Georgia.

19.

Narconon of Georgia denies that the temporary residence of Patrick Desmond at the Sovereign Place Apartments was part of an inpatient program provided by Narconon of Georgia.

20.

At no time material to the subject matter of the Underlying Action did Narconon of Georgia obtain or hold license from the Department of Human Resources of the State of Georgia for the operation of an inpatient drug and alcohol abuse counseling program.

21.

Operation of an inpatient drug and alcohol abuse counseling program without license from the Department of Human Resources of the State of Georgia for such a program would have been in violation of Georgia law.

22.

Regardless of any representations made by Narconon of Georgia, it did not operate a drug and alcohol abuse counseling program at the Sovereign Place Apartments while Patrick Desmond resided there.



23.

Narconon of Georgia did not provide health care services to Patrick Desmond at Sovereign Place Apartments.

24.

Narconon of Georgia did not provide and Patrick Desmond did not receive drug and alcohol abuse counseling from Narconon of Georgia at the Sovereign Place Apartments.

25.

The Desmonds claim in the Underlying Action that Narconon of Georgia is liable for the death of Patrick Desmond for failing to provide adequate security and supervision for Patrick Desmond at the Sovereign Place Apartments.

26.

The death of Patrick Desmond resulted from a drug overdose that did not occur at the Sovereign Place Apartments.

27.

The death of Patrick Desmond did not result from any security, supervision or the lack thereof at the Sovereign Place Apartments.

28.

Western World issued Commercial Lines Policy No. NPP1123556 to Narconon of Georgia (“the Western World Policy”), effective August 19, 2007 to August 19, 2008. A true and correct copy of the Western World Policy is attached hereto as Exhibit “B”.

29.

By endorsement to the Western World Policy, Narconon International is listed as an additional insured.

30.

Delgado is not a named insured or an additional insured and does not otherwise qualify as an insured person under the Western World Policy.

31.

Delgado is not covered under the Western World Policy for any of the allegations by the Desmonds in the Underlying Action.

32.

Lisa Carolina Robbins M.D. (“Dr. Robbins”) and the Robbins Group, Inc. have made no claim for coverage under the Western World Policy, are not insured persons under the Western World Policy and have no interest in this action.

33.

The Western World Policy contains Commercial Liability coverage, Professional Liability coverage, and Sexual Molestation coverage subject to its terms, conditions, limitations and exclusions.

34.

None of the allegations of fraud, misrepresentation or Civil Racketeer Influenced and Corrupt Organizations Act (“RICO”) claims in the Desmonds’ Underlying Action are covered under the Western World Policy.

35.

None of the allegations for recovery for the death of Patrick Desmond in the Underlying Action are covered under the Commercial Liability coverage contained in the Western World Policy because, among other reasons, the death did not result from an “occurrence” as that term is defined in the Western World Policy.

36.

None of the allegations for recovery for the death of Patrick Desmond in the Underlying Action are covered under the Commercial Liability, Professional Liability or Sexual Molestation coverages in the Western World Policy because, among other reasons, the Western World Policy does not apply to operations at any

location other than 5688 Peachtree Parkway, Ste. B1, Norcross, GA 30092 and 6487 Peachtree Industrial Blvd, Ste. C, Norcross, GA 30092.

37.

None of the allegations for recovery for the death of Patrick Desmond in the Underlying Action are covered under the Commercial Liability, Professional Liability or Sexual Molestation coverages in the Western World Policy because, among other reasons, the Western World Policy does not apply to operations at the Sovereign Place Apartments.

38.

None of the allegations for recovery for the death of Patrick Desmond in the Underlying Action are covered under the Commercial Liability, Professional Liability or Sexual Molestation coverages in the Western World Policy because, among other reasons, the Western World Policy does not apply to operations other than outpatient drug and alcohol abuse counseling.

39.

None of the allegations for recovery for the death of Patrick Desmond in the Underlying Action are covered under the Commercial Liability, Professional Liability or Sexual Molestation coverages in the Western World Policy because,

among other reasons, the Western World Policy does not apply to the operations other than drug and alcohol abuse counseling and saunas.

40.

The Commercial Liability, Professional Liability and/or Sexual Molestation coverages in the Western World Policy do not apply to any claims in the Underlying Action for punitive damages.

41.

The Western World Policy does not apply to any allegations in the Underlying Action for expected or intended injury or for expected or intended damage to property.

42.

The Western World Policy does not apply to any allegations in the Underlying Action for contractual liability.

43.

All coverage defenses applicable under the Western World Policy to the allegations in the Underlying Action against Narconon of Georgia apply also to Narconon International and Delgado.

44.

Any coverage available to Narconon International under the Western World Policy is limited to liability of Narconon International for the acts, omissions and/or negligence of the Narconon of Georgia and does not apply to claims, suits and/or damages arising out of the acts, omissions and/or negligence of the Narconon International.

45.

The Western World Policy does not apply to Narconon International for the allegations of the Underlying Action.

46.

Western World is providing a legal defense to Narconon of Georgia, Narconon International and Delgado in the Underlying Action subject to reservation of rights to deny coverage and the right to withdraw such legal defense.

47.

Western World is faced with the immediate expense of substantial legal fees and related costs for the defense of Narconon of Georgia, Narconon International and Delgado in the Underlying Action for potential liability that it contends is not covered under the Western World Policy. This dilemma and immediate risk of the

incursion of substantial expenses for and action for which coverage does not apply presents a ripe justiciable controversy for which declaratory relief is appropriate.

48.

Although this controversy is related to the Underlying Action, the Underlying Action does not address the insurance coverage issues presented herein and does not afford the opportunity to resolve the subject controversy. Accordingly, Western World alleges that there is a specific need for the Court to declare the rights and obligations of the parties pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure.

#### **IV. THE DEATH OF PATRICK DESMOND**

49.

Although the Underlying Action sets forth several claims concerning the Narconon of Georgia drug and alcohol abuse counseling, including misrepresentation, fraud, conspiracy and civil RICO, the only specific damages sought are for the death of Patrick Desmond.

50.

Shortly before 2:00 a.m. on June 10, 2008, emergency medical personnel responded to a 911 call and found Patrick Desmond in an automobile parked on the

shoulder of I-285 in DeKalb County, Georgia. The automobile in which Patrick Desmond was found is referred to herein as “the Automobile”.

51.

At said time and place, said emergency personnel found Patrick Desmond in cardiopulmonary arrest with no blood pressure or pulse.

52.

Patrick Desmond was taken by said emergency personnel to Northside Hospital Emergency Department, where the emergency physician diagnosed him with cardiopulmonary arrest secondary to heroin overdose.

53.

Following said diagnosis, life support was removed and Patrick Desmond was pronounced dead at 5:15 P.M. on June 11, 2008.

54.

Patrick Desmond was a 28 year old adult at the time of his death.

55.

Patrick Desmond was at no time placed by a court in involuntary inpatient placement or involuntary hospitalization.



56.

At no time material to the events which are the subject of the Underlying Action was a guardian or guardian advocate appointed for Patrick Desmond by any court.

57.

At no time prior to his death was a petition filed with any court to have Patrick Desmond involuntarily placed in the care of any institution, hospital or other facility for treatment.

58.

At all times relevant hereto, Patrick Desmond was a legally competent adult who contracted with Narconon of Georgia for drug and alcohol abuse counseling.

59.

At no time during Patrick Desmond's involvement with drug and alcohol abuse counseling at Narconon of Georgia had he been declared legally incapacitated or incompetent by any court.

60.

At all times during Patrick Desmond's participation in drug and alcohol abuse counseling at Narconon of Georgia, he was not under any guardianship order

or decree and was not otherwise involuntarily hospitalized or placed in involuntary inpatient placement to the care of any of the Underlying Defendants.

61.

At no time prior to his death was a petition filed with any court to have Patrick Desmond declared incapacitated or incompetent, involuntarily hospitalized, or placed in involuntary inpatient care.

62.

The Desmonds claim that Patrick Desmond consumed alcohol and became intoxicated at the Sovereign Place Apartments on June 10, 2008.

63.

None of the alcohol consumed by Patrick Desmond on June 10, 2008 was provided by any of the Underlying Defendants.

64.

None of the alcohol consumed by Patrick Desmond on June 10, 2008 was provided by any employee or agent of any of the Underlying Defendants.

65.

No alcohol consumed by Patrick Desmond, if any, on June 11, 2008 was provided by any of the Underlying Defendants.

66.

No alcohol consumed by Patrick Desmond, if any, on June 11, 2008 was provided by any employee or agent of any of the Underlying Defendants.

67.

At no time did Narconon of Georgia furnish food, beverages or appliances to Patrick Desmond while he resided at Sovereign Place Apartments.

68.

On June 10, 2008, Patrick Desmond had the legal right to come and go from the Sovereign Place Apartments at will.

69.

On June 10, 2008, none of the Underlying Defendants had any legal right to restrain or detain Patrick Desmond from leaving the Sovereign Place Apartments.

70.

On June 10, 2008, none of the Underlying Defendants had any legal right to prevent Patrick Desmond from leaving the Sovereign Place Apartments.

71.

On the evening of June 10, 2008, Patrick Desmond departed from the premises of the Sovereign Place Apartments and did not return to Sovereign Place Apartments prior to his death.

72.

On the evening of June 10, 2008, Patrick Desmond departed from the premises of the Sovereign Place Apartments of his own free will.

73.

On the evening of June 10, 2008, Patrick Desmond chose to leave the premises of the Sovereign Place Apartments.

74.

At the time Patrick Desmond departed from the premises of the Sovereign Place Apartments on the evening of June 10, 2008, he was a passenger in the Automobile.

75.

At the time he departed from the premises of the Sovereign Place Apartments on the evening of June 10, 2008, Patrick Desmond was not receiving drug and alcohol abuse counseling from Narconon of Georgia.

76.

At the time he departed from the premises of the Sovereign Place Apartments on the evening of June 10, 2008, Patrick Desmond was not receiving any healthcare services from Narconon of Georgia.

77.

At the time of his departure from the Sovereign Place Apartments on the evening of June 10, 2008, Patrick Desmond was not accompanied by any employee or agent of any of the Underlying Defendants.

78.

After leaving Sovereign Place Apartments on June 10, 2008, Patrick Desmond ingested, injected into himself or otherwise consumed heroin.

79.

The amount of heroin ingested, injected into himself or otherwise consumed by Patrick Desmond after leaving the Sovereign Place Apartments on the evening of June 10, 2008 was sufficient to cause him to suffer cardiac arrest.

80.

None of the Underlying Defendants and none of their agents, representatives or employees were present at the time Patrick Desmond ingested, injected into himself or otherwise consumed the substance or substances which led to his death on June 11, 2008.

81.

No substances which led to the death of Patrick Desmond were consumed by him at the Narconon of Georgia facilities located at 5688 Peachtree Parkway, Ste.

B1, Norcross, GA 30092 or 6487 Peachtree Industrial Blvd, Ste. C, Norcross, GA 30092.

82.

No substances which led to the death of Patrick Desmond were consumed by him as part of any drug and alcohol abuse counseling or healthcare services provided by Narconon of Georgia.

83.

No substances which led to the death of Patrick Desmond were consumed by him as part of any sauna program provided by Narconon of Georgia.

84.

No substances which led to the death of Patrick Desmond were consumed by him as part of any drug and alcohol abuse counseling or healthcare services provided by Narconon International.

85.

No substances which led to the death of Patrick Desmond were consumed by him as part of any sauna program provided by Narconon International.

86.

No substances consumed by Patrick Desmond which led to his death were provided to him by any of the Underlying Defendants.

87.

No substances consumed by Patrick Desmond which led to his death were provided to him by any agent or employee of the Underlying Defendants.

88.

Patrick Desmond's death did not occur on any premises owned or operated by any of the Underlying Defendants.

89.

Patrick Desmond's voluntary consumption of heroin did not occur on any premises owned or operated by any of the Underlying Defendants.

90.

No substances consumed by Patrick Desmond which led to his death were provided to him by Narconon of Georgia or Narconon International.

91.

No substances consumed by Patrick Desmond which led to his death were provided to him by Narconon of Georgia or Narconon International.

92.

Patrick Desmond's death did not occur on any premises owned or operated by Narconon of Georgia or Narconon International.

93.

Patrick Desmond's voluntary consumption of heroin did not occur on any premises owned or operated by Narconon of Georgia or Narconon International.

94.

At all times on June 10, 2008 and June 11, 2008, Patrick Desmond was required to exercise reasonable care for his own safety.

95.

Patrick Desmond failed to exercise ordinary care for his own safety by the voluntary consumption of the heroin which led to his death.

## **V. THE WESTERN WORLD POLICY**

96.

The Western World Policy provides in part:

### **COMBINED PROVISIONS ENDORSEMENT**

Each endorsement marked in the box is made a part of your policy.

1. CLASSIFICATION LIMITATION – WW 12 [07/04]

This insurance applies only to operations that are described on the Declarations page, the Extension of Declarations or an endorsement of this policy. If any operations are not described, they are not insured hereunder.

(Ex. "B", WW 104C [01/07]).



97.

The Western World Policy's Declarations provide in part:

**COMMON POLICY DECLARATIONS**

\* \* \*

**Location of Business:**

6487 Peachtree Industrial Blvd.  
Norcross, GA 30092

**Business Description:**

Drug & Alcohol Abuse Counseling - Outpatient

(Ex. "B", WW230 [06/04]).

98.

The Commercial Liability Coverage part of the Western World Policy provides in part:

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

\* \* \*

**SECTION I - COVERAGES**

**COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

**1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply...
- b. This insurance applies to "bodily injury" and "property damage" only if...
  - (2) The "bodily injury" or "property damage" is caused by an "occurrence"...

\* \* \*

**2. Exclusions**

This insurance does not apply to :

- a. Expected or intended Injury  
"Bodily injury" or "property damage" expected or intended from the standpoint of the insured.

\* \* \*

**DEFINITIONS**

\* \* \*

“Occurrence” means **an accident**, including continuous or repeated exposure to substantially the same general harmful conditions.

(Ex. “B”, CL 137 [7-98] / CG 00 01 07 98).

99.

The Professional Liability Coverage part of the Western World Policy provides in part:

**PROFESSIONAL LIABILITY INSURANCE**

...This form modifies the insurance provided under the Commercial General Liability Policy.

**Schedule**

COVERAGE	LIMITS OF INSURANCE		
D. Professional Liability	\$ 1,000,000	Each Professional Incident	
	\$ 2,000,000	General Aggregate	
Description of Professional Services:	Premium Basis	Rate	Advance Premium
<b>Drug &amp; Alcohol Abuse Counseling – Outpatient – Not for profit</b>	Included	Included	Included
	Total Advance Premium		Included

A. The following **COVERAGE D. – PROFESSIONAL LIABILITY**, is added to SECTION I - COVERAGES

**1. Insuring Agreement**

- a. We will pay those sums the insured becomes legally obligated to pay as damages because of any “bodily injury”, “property damage” or “personal injury” to which this coverage part applies caused by a “professional incident”... ..

This insurance applies...only if: (1) The “bodily injury”, “property damage” or “personal injury” is caused by a “professional incident”...

\* \* \*

“Professional Incident” means any negligent act or omission:

- a. In the furnishing of healthcare services including the furnishing of food beverages, medications or appliances in connection with such services and the post mortem handling of human bodies.
- b. In the rendering of any other professional services but only of the type described in the "Schedule" of this coverage part.

Any such act or omission together with all subsequent or related acts or omissions is providing the above services to any one person shall be considered one "professional incident".

(Ex. B, WW219 [8/94]).

100.

The Western World Policy includes an Endorsement which provides in part:

**LIMITATION OF COVERAGE TO DESIGNATED  
PREMISES OR PROJECT.**

\* \* \*

**SCHEDULE**

<p><b>Premises:</b></p> <p><b>5688 Peachtree Parkway Suite B1 / Norcross, GA 30092</b> <b>6487 Peachtree Industrial Blvd. Suite C / Norcross GA 30092</b></p>
<p><b>Project:</b></p> <p><b>Drug and Alcohol Abuse Counseling</b> <b>Saunas</b></p>

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

This insurance applies only to "bodily injury", "property damage", "personal and advertising injury" and medical expenses arising out of:

1. The ownership, maintenance or use of the premises shown in the Schedule and operations necessary or incidental to those premises; or
2. The project shown in the Schedule.

(Ex. B).

**VI. THE UNDERLYING CLAIMS**

101.

In the Amended Complaint in the Underlying Action, the Desmonds allege the following ten Counts or theories of liability:

- (Count I) Negligence of NARCONON OF GEORGIA (Ex. A, ¶¶ 144 – 147);
- (Count II) Negligence Per Se of NARCONON OF GEORGIA (Ex. A, ¶¶ 148 – 150);
- (Count III) Fraud of NARCONON OF GEORGIA (Ex. A, ¶¶ 151 – 156);
- (Count IV) Negligence against an entity that is not a party to this matter (Ex. A, ¶¶ 157 – 160);
- (Count V) Civil Conspiracy of NARCONON OF GEORGIA and NARCONON INTERNATIONAL (Ex. A, ¶¶ 161 – 162);
- (Count VI) Professional negligence against persons and entities not a party to this matter (Ex. A, ¶¶ 163 – 165);
- (Count VII) Fraud of NARCONON INTERNATIONAL (Ex. A, ¶ 166);

- (Count VIII) Civil Rico for False Statements to a Government Agency against NARCONON OF GEORGIA and NARCONON INTERNATIONAL (Ex. A, ¶¶ 167 – 169);
- (Count IX) Civil Rico for Mail Fraud against NARCONON OF GEORGIA and NARCONON INTERNATIONAL (Ex. A, ¶¶ 170 – 177); and
- (Count X) Civil Rico for Theft By Taking against NARCONON OF GEORGIA and NARCONON INTERNATIONAL (Ex. A, ¶¶ 174 – 176).

**CLAIMS FOR NEGLIGENCE AGAINST NARCONON OF  
(COUNT I)**

102.

In “COUNT I: NEGLIGENCE OF NARCONON OF GEORGIA”, found at paragraphs 144-147 of the Amended Complaint in the Underlying Action, the Desmonds allege that Narconon Of Georgia failed to provide safe, properly licensed, legally operated, scientifically and medically based rehabilitation treatment services.

103.

The allegations in “COUNT I: NEGLIGENCE OF NARCONON OF GEORGIA”, even if taken as true, did not cause the death of Patrick Desmond.

104.

Any damages caused by the alleged negligence of Narconon of Georgia and Narconon International described in Count I of the Amended Complaint in the Underlying Action were not caused by an “*occurrence*” as that term is defined in the Commercial Liability Coverage Part and are not covered under the Commercial Liability Coverage Part of the Western World Policy.

105.

Any damages caused by the alleged negligence of Narconon of Georgia and Narconon International described in Count I of the Amended Complaint in the Underlying Action, were not caused by a “*Professional Incident*” as that term is defined in the Professional Liability Coverage Part and are not covered under the Professional Liability Coverage Part of the Western World Policy.

106.

Any damages caused by the alleged negligence of Narconon of Georgia and Narconon International described in Count I of the Amended Complaint in the Underlying Action are not covered under the Western World Policy by reason of

the Classification Limitation contained in the Combined Provisions Endorsement-General and the Limitation of Coverage to Designated Premises or Project Endorsement.

**CLAIMS FOR NEGLIGENCE PER SE AGAINST NARCONON OF GEORGIA**  
**(COUNT II)**

107.

In “COUNT II: NEGLIGENCE PER SE OF NARCONON OF GEORGIA”, found at paragraphs 148-150 of the Amended Complaint of the Underlying Action, the Desmonds allege that Narconon of Georgia operated unlicensed housing programs for its drug and alcohol rehabilitation patients and that this constituted negligence per se.

108.

The allegations in “COUNT II: NEGLIGENCE PER SE OF NARCONON OF GEORGIA”, even if taken as true, did not cause the death of Patrick Desmond.

109.

Any damages caused by Narconon of Georgia's operation of unlicensed housing programs, if any, were not caused by an “*occurrence*” as that term is defined in the Commercial Liability Coverage Part and are not covered under the Commercial Liability Coverage Part of the Western World Policy.

110.

Any damages caused by Narconon of Georgia's operation of unlicensed housing programs, if any, were not caused by the furnishing of healthcare or other professional services for outpatient drug and alcohol abuse counseling and do not fall within the definition of a “*Professional Incident*” and are not covered under the Professional Liability Coverage Part of the Western World Policy.

111.

Any damages caused by Narconon of Georgia's operation of unlicensed housing programs, if any, are not covered under the Western World Policy by reason of the Classification Limitation contained in the Combined Provisions Endorsement-General and the Limitation of Coverage to Designated Premises or Project Endorsement.

**CLAIMS OF FRAUD AGAINST NARCONON OF GEORGIA**  
**(COUNT III)**

112.

In “COUNT III: FRAUD OF NARCONON OF GEORGIA”, found at paragraphs 151-156 of the Amended Complaint, the Desmonds allege Narconon of Georgia “knowingly and willfully made false representations to the Desmonds and to the Brevard County Drug Court, indicating that it was licensed and/or otherwise authorized to operate a residential drug and alcohol rehabilitation facility and



would be capable of supporting and meeting the needs of Patrick W. Desmond by providing necessary 24-hour close supervision and monitoring...that NARCONON OF GEORGIA was a residential facility that met the requirements of the Drug Court; and that Patrick would be continuously and closely supported, monitored and supervised at all times while participating in the rehabilitation program.”

113.

Under Georgia law, an essential element in every fraud action is a finding of intent to deceive and the intent to injure the opposite party.

114.

Intentional acts are specifically excluded under an exclusion found in the Commercial Liability Coverage Part of the Policy.

115.

The claims made under “COUNT III: FRAUD OF NARCONON OF GEORGIA” are excluded from coverage under the Commercial Liability Coverage Part of the Policy.

116.

The allegations in “COUNT III: FRAUD OF NARCONON OF GEORGIA”, even if taken as true, did not cause the death of Patrick Desmond.

117.

Any damages caused by Narconon of Georgia's false representations, if any, to the Desmonds and to the Brevard County Drug Court were not caused by an “*occurrence*” as that term is defined in the Commercial Liability Coverage Part and are not covered under the Commercial Liability Coverage Part of the Western World Policy.

118.

Any damages caused by Narconon of Georgia's false representations, if any, to the Desmonds and to the Brevard County Drug Court were not caused by the furnishing of healthcare or other professional services for outpatient drug and alcohol abuse counseling and do not fall within the definition of a “*Professional Incident*” and are not covered under the Professional Liability Coverage Part of the Western World Policy.

119.

Any damages caused by Narconon of Georgia's false representations, if any, are not covered under the Western World Policy by reason of the Classification Limitation contained in the Combined Provisions Endorsement-General and the Limitation of Coverage to Designated Premises or Project Endorsement.

**CLAIMS FOR NEGLIGENCE AGAINST DELGADO**  
**(COUNT IV)**

120.

In “COUNT IV: NEGLIGENCE OF NARCONON OF GEORGIA”, found at paragraphs 157-160 of the Amended Complaint in the Underlying Action, the Desmonds allege that Delgado failed to provide a safe environment, failed to provide adequate security for and supervision of drug and alcohol patients housed at the Sovereign Place Apartments.

121.

The allegations in “COUNT IV: NEGLIGENCE OF DELGADO”, even if taken as true, did not cause the death of Patrick Desmond.

122.

Any damages caused by the alleged negligence described in Count IV of the Amended Complaint in the Underlying Action, if any, were not caused by an “*occurrence*” as that term is defined in the Commercial Liability Coverage Part and are not covered under the Commercial Liability Coverage Part of the Western World Policy.

123.

Any damages caused by the alleged negligence described in Count IV of the Amended Complaint in the Underlying Action, if any, were not caused by a

“*Professional Incident*” as that term is defined in the Professional Liability Coverage Part and are not covered under the Professional Liability Coverage Part of the Western World Policy.

124.

Any damages caused by the alleged negligence described in Count IV of the Amended Complaint in the Underlying Action, if any, are not covered under the Western World Policy by reason of the Classification Limitation contained in the Combined Provisions Endorsement-General and the Limitation of Coverage to Designated Premises or Project Endorsement.

**CLAIMS OF CIVIL CONSPIRACY AGAINST NARCONON OF  
GEORGIA AND NARCONON INTERNATIONAL  
(COUNT V)**

125.

In “COUNT V: CIVIL CONSPIRACY BY NARCONON OF GEORGIA, NARCONON INTERNATIONAL...”, found at paragraphs 161-162 of the Amended Complaint of the Underlying Action, the Desmonds allege Narconon of Georgia and Narconon International acted together and in concert to facilitate the unlicensed and illegal operation of a drug and alcohol rehabilitation housing program at the Sovereign Place Apartments.

126.

The elements of a civil conspiracy include a showing of the intent to combine with two or more persons to do something unlawful or oppressive, or immoral, as a means or an end.

127.

Intentional acts are specifically excluded under an exclusion found in the Commercial Liability Coverage Part of the Western World Policy.

128.

The claims made under “COUNT V: CIVIL CONSPIRACY BY NARCONON OF GEORGIA, NARCONON INTERNATIONAL...” are excluded from coverage under the Commercial Liability Coverage Part of the Western World Policy.

129.

The allegations in “COUNT V: CIVIL CONSPIRACY BY NARCONON OF GEORGIA, NARCONON INTERNATIONAL...”, even if taken as true, did not cause the death of Patrick Desmond.

130.

Any damages caused by Narconon of Georgia and Narconon International acting together and in concert to facilitate the unlicensed and illegal operation of a

housing program at the Sovereign Place Apartments, if any, were not caused by an “*occurrence*” as that term is defined in the Commercial Liability Coverage Part and are not covered under the Commercial Liability Coverage Part of the Western World Policy.

131.

Any damages caused by Narconon of Georgia and Narconon International acting together and in concert to facilitate the unlicensed and illegal operation of a housing program at the Sovereign Place Apartments, if any, were not caused by the furnishing of healthcare or other professional services for outpatient drug and alcohol abuse counseling and do not fall within the definition of a “*Professional Incident*” and are not covered under the Professional Liability Coverage Part of the Western World Policy.

132.

Any damages caused by Narconon of Georgia and Narconon International acting together and in concert to facilitate the unlicensed and illegal housing program at the Sovereign Place Apartments, if any, are not covered under the Western World Policy by reason of the Classification Limitation contained in the Combined Provisions Endorsement-General and the Limitation of Coverage to Designated Premises or Project Endorsement.

**CLAIMS FOR PROFESSIONAL NEGLIGENCE AGAINST DR. LISA  
ROBBINS AND THE ROBBINS GROUP, INC.**  
**(COUNT VI)**

133.

In “COUNT VI: PROFESSIONAL NEGLIGENCE DR. LISA ROBBINS AND THE ROBBINS GROUP, INC.”, found at paragraphs 163-165 of the Amended Complaint in the Underlying Action, the Desmonds allegations solely against Dr. Robbins and the Robbins Group, Inc. who are not insured under the Western World Policy and who make no claim for coverage under the Western World Policy.

134.

The allegations in “COUNT VI: PROFESSIONAL NEGLIGENCE DR. LISA ROBBINS AND THE ROBBINS GROUP, INC.”, even if taken as true, did not cause the death of Patrick Desmond.

**CLAIMS FOR FRAUD AGAINST NARCONON INTERNATIONAL**  
**(COUNT VII)**

135.

In “COUNT VII: FRAUD OF NARCONON INTERNATIONAL”, found at paragraph 166 of the Amended Complaint of the Underlying Action, the Desmonds allege Narconon International provided “intentionally false and misleading information or causing... to law enforcement entities, to include but not

be limited to the DeKalb County Medical Examiner's Office; and ... submitted an intentionally false and misleading report dated June 19, 2008 to the Brevard County Drug Court.”

136.

Under Georgia law, the essential elements of the tort of negligent misrepresentation require a finding of specific intent to cause harm.

137.

Intentional acts are specifically excluded under an exclusion found in the Commercial Liability Coverage Part of the Western World Policy.

138.

The claims made under “COUNT VII: FRAUD OF NARCONON INTERNATIONAL” are excluded from coverage under the Commercial Liability Coverage Part of the Western World Policy.

139.

The allegations in “COUNT VII: FRAUD OF NARCONON INTERNATIONAL”, even if taken as true, did not cause the death of Patrick Desmond.



140.

Any damages caused Narconon International allegedly providing “intentionally false and misleading information or causing... to law enforcement entities, to include but not be limited to the DeKalb County Medical Examiner's Office; and ... submitted an intentionally false and misleading report dated June 19, 2008 to the Brevard County Drug Court”, if any, were not caused by an “*occurrence*” as that term is defined in the Commercial Liability Coverage Part and are not covered under the Commercial Liability Coverage Part of the Western World Policy.

141.

Any damages caused Narconon International allegedly providing “intentionally false and misleading information or causing... to law enforcement entities, to include but not be limited to the DeKalb County Medical Examiner's Office; and ... submitted an intentionally false and misleading report dated June 19, 2008 to the Brevard County Drug Court”, if any, were not caused by the furnishing of healthcare or other professional services for outpatient drug and alcohol abuse counseling and do not fall within the definition of a “*Professional Incident*” and are not covered under the Professional Liability Coverage Part of the Western World Policy.

142.

Any damages caused Narconon International allegedly providing “intentionally false and misleading information... to law enforcement entities, to include but not be limited to the DeKalb County Medical Examiner's Office; and ... submitted an intentionally false and misleading report dated June 19, 2008 to the Brevard County Drug Court”, if any, are not covered under the Western World Policy by reason of the Classification Limitation contained in the Combined Provisions Endorsement-General and the Limitation of Coverage to Designated Premises or Project Endorsement.

**CLAIMS FOR CIVIL RICO FOR FALSE STATEMENTS TO A  
GOVERNMENT AGENCY AGAINST NARCONON OF GEORGIA  
AND NARCONON INTERNATIONAL  
(COUNT VIII)**

143.

In “COUNT VIII: CIVIL RICO FOR FALSE STATEMENTS TO A GOVERNMENT AGENCY”, found at paragraphs 167-169 of the Amended Complaint, the Desmonds allege Narconon of Georgia and Narconon International engaged in at least two acts of racketeering activity by committing numerous counts of false statements and writings to a Government Agency.

144.

The allegations in “COUNT VIII: CIVIL RICO FOR FALSE STATEMENTS TO A GOVERNMENT AGENCY”, even if taken as true, did not cause the death of Patrick Desmond.

145.

Any damages caused by Narconon of Georgia and Narconon International allegedly making of false statements and writings to a Government Agency, if any were not caused by an “*occurrence*” as that term is defined in the Commercial Liability Coverage Part and are not covered under the Commercial Liability Coverage Part of the Western World Policy.

146.

Any damages caused by Narconon of Georgia and Narconon International allegedly making of false statements and writings to a Government Agency, if any, were not caused by the furnishing of healthcare or other professional services for outpatient drug and alcohol abuse counseling and do not fall within the definition of a “*Professional Incident*” and are not covered under the Professional Liability Coverage Part of the Western World Policy.

147.

Any damages caused by Narconon of Georgia and Narconon International allegedly making of false statements and writings to a Government Agency, if any, are not covered under the Western World Policy by reason of the Classification Limitation contained in the Combined Provisions Endorsement-General and the Limitation of Coverage to Designated Premises or Project Endorsement.

**CLAIMS FOR CIVIL RICO FOR MAIL FRAUD AGAINST  
NARCONON OF GEORGIA AND NARCONON INTERNATIONAL  
(COUNT IX)**

148.

In “COUNT IX: CIVIL RICO FOR MAIL FRAUD”, found at paragraphs 170 – 173 of the Amended Complaint, the Desmonds allege Narconon of Georgia and Narconon International engaged in at least two acts of racketeering activity by committing numerous counts of mail fraud by having transmitted written communication by wire or mail that was devised in scheme to defraud.

149.

The allegations in “COUNT IX: CIVIL RICO FOR MAIL FRAUD”, even if taken as true, did not cause the death of Patrick Desmond.

150.

Any damages caused by Narconon of Georgia and Narconon International allegedly having transmitted written communication by wire or mail that was devised in scheme to defraud, if any, were not caused by an “*occurrence*” as that term is defined in the Commercial Liability Coverage Part and are not covered under the Commercial Liability Coverage Part of the Western World Policy.

151.

Any damages caused by Narconon of Georgia and Narconon International allegedly having transmitted written communication by wire or mail that was devised in scheme to defraud, if any, were not caused by the furnishing of healthcare or other professional services for outpatient drug and alcohol abuse counseling and do not fall within the definition of a “*Professional Incident*” and are not covered under the Professional Liability Coverage Part of the Western World Policy.

152.

Any damages caused by Narconon of Georgia and Narconon International allegedly having transmitted written communication by wire or mail that was devised in scheme to defraud, if any, are not covered under the Western World Policy by reason of the Classification Limitation contained in the Combined

Provisions Endorsement-General and the Limitation of Coverage to Designated Premises or Project Endorsement.

**CLAIMS FOR CIVIL RICO FOR THEFT BY TAKING AGAINST  
NARCONON OF GEORGIA AND NARCONON INTERNATIONAL  
(COUNT X)**

153.

In “COUNT X: CIVIL RICO FOR THEFT BY TAKING”, found at paragraphs 174 – 176 of the Amended Complaint in the Underlying Action, the Desmonds allege Narconon of Georgia and Narconon International engaged in at least two acts of racketeering activity by committing theft by deception, by obtaining money by deceitful means or unlawful practice by promising the Florida Drug Court and the Desmonds the following which Narconon of Georgia allegedly did not provide:

- a. That Narconon of Georgia was licensed to provide residential rehabilitation treatment.
- b. That Narconon of Georgia would provide adequate supervision of its patients twenty four hours a day.
- c. That Narconon of Georgia would provide substantive education as the physiological component of alcohol and substance abuse on the body.

d. That Narconon of Georgia was otherwise in compliance with applicable DIIR Rules governing drug and rehabilitation treatment facilities.

154.

The allegations of “COUNT X: CIVIL RICO FOR THEFT BY TAKING”, even if taken as true, did not cause the death of Patrick Desmond.

155.

Any damages caused by Narconon of Georgia and Narconon International allegedly obtaining money by deceitful means or unlawful practice, if any, , were not caused by an “*occurrence*” as that term is defined in the Commercial Liability Coverage Part and are not covered under the Commercial Liability Coverage Part of the Western World Policy.

156.

Any damages caused by Narconon of Georgia and Narconon International allegedly obtaining money by deceitful means or unlawful practice, if any, were not caused by the furnishing of healthcare or other professional services for outpatient drug and alcohol abuse counseling and do not fall within the definition of a “*Professional Incident*” and are not covered under the Professional Liability Coverage Part of the Western World Policy.

157.

Any damages caused by Narconon of Georgia and Narconon International allegedly obtaining money by deceitful means or unlawful practice, if any, are not covered under the Western World Policy by reason of the Classification Limitation contained in the Combined Provisions Endorsement-General and the Limitation of Coverage to Designated Premises or Project Endorsement.

**PUNITIVE DAMAGES**

158.

The Western World Policy does not cover the liability, if any, of any of the Underlying Defendants for punitive damages in the Underlying Action.

WHEREFORE, Plaintiff Petitioner Western World respectfully requests this court to enter judgment as follows:

- A. Declaring and determining that the Western World Policy does not obligate Western World to provide coverage or a defense to any of the Underlying Defendants for the claims for the death of Patrick Desmond in the Underlying Action.
- B. Declaring and determining that the Western World Policy does not obligate Western World to provide coverage or a defense to Narconon of



Georgia for the claims for the death of Patrick Desmond in the Underlying Action.

- C. Declaring and determining that the Western World Policy does not obligate Western World to provide coverage or a defense to Narconon International for the claims for the death of Patrick Desmond in the Underlying Action.
- D. Declaring and determining that the Western World Policy does not obligate Western World to provide coverage or a defense to Delgado for the claims for the death of Patrick Desmond in the Underlying Action.
- E. Declaring and determining that the Western World Policy does not obligate Western World to provide coverage or a defense to Narconon of Georgia, Narconon International or Delgado for the allegations in the Underlying Action set forth in Count I of the Amended Complaint.
- F. Declaring and determining that the Western World Policy does not obligate Western World to provide coverage or a defense Narconon of Georgia, Narconon International or Delgado for the allegations in the Underlying Action set forth in Count II of the Amended Complaint.
- G. Declaring and determining that the Western World Policy does not obligate Western World to provide coverage or a defense to Narconon of

- Georgia, Narconon International or Delgado for the allegations in the Underlying Action set forth in Count III of the Amended Complaint.
- H. Declaring and determining that the Western World Policy does not obligate Western World to provide coverage or a defense to Narconon of Georgia, Narconon International or Delgado for the allegations in the Underlying Action set forth in Count IV of the Amended Complaint.
- I. Declaring and determining that the Western World Policy does not obligate Western World to provide coverage or a defense to Narconon of Georgia, Narconon International or Delgado for the allegations in the Underlying Action set forth in Count V of the Amended Complaint.
- J. Declaring and determining that the Western World Policy does not obligate Western World to provide coverage or a defense to Narconon of Georgia, Narconon International or Delgado for the allegations in the Underlying Action set forth in Count VI of the Amended Complaint.
- K. Declaring and determining that the Western World Policy does not obligate Western World to provide coverage or a defense to Narconon of Georgia, Narconon International or Delgado for the allegations in the Underlying Action set forth in Count VII of the Amended Complaint.

- L. Declaring and determining that the Western World Policy does not obligate Western World to provide coverage or a defense to Narconon of Georgia, Narconon International or Delgado for the allegations in the Underlying Action set forth in Count VIII of the Amended Complaint.
- M. Declaring and determining that the Western World Policy does not obligate Western World to provide coverage or a defense to Narconon of Georgia, Narconon International or Delgado for the allegations in the Underlying Action set forth in Count IX of the Amended Complaint.
- N. Declaring and determining that the Western World Policy does not obligate Western World to provide coverage or a defense Narconon of Georgia, Narconon International or Delgado for the allegations in the Underlying Action set forth in Count X of the Amended Complaint.
- O. Western World Policy does not cover the liability, if any, of Narconon of Georgia, Narconon International or Delgado for punitive damages in the Underlying Action.
- P. Declaring and determining such other relief as the Court deems just and proper.

**Jury Trial Demanded**

This 20<sup>th</sup> day of June, 2012.

Respectfully submitted,

s/R. CLAY PORTER

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 20, 2012, I electronically filed **PETITION FOR DECLARATORY JUDGMENT RELIEF** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

s/R. CLAY PORTER

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s/BARBARA L. MULHOLLAND

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I do hereby certify that, pursuant to LR 5.1B, N.D.Ga., the above document was prepared in Times New Roman, 14 pt.

s/R. CLAY PORTER

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